

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

MARINE CLUB MANAGER, INC., EBRM)	
RESURRECTION LLC, and ERIC)	
BLUMENFELD)	
)	Case No. 3:22-cv-609-MOC-DCK
Petitioners,)	
)	<u>RESPONDENT’S MOTION TO</u>
v.)	<u>DISMISS</u>
)	
RB COMMERCIAL MORTGAGE, LLC)	
)	
Respondents.)	

**RESPONDENTS’ MOTION TO DISMISS THE PETITION TO VACATE, MODIFY, OR
CORRECT ARBITRATION AWARD**

Respondent RB Commercial Mortgage, LLC (“RB Commercial”) moves this Court under Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6) to dismiss the Petition to Vacate, Modify or Correct Arbitration Award (the “Petition”) (Dkt. 1) and sets forth the following in support thereof:

1. The Petition is not ripe for adjudication by this Court and should be dismissed pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure because the award which the Petition seeks to vacate is presently the subject of a contractual arbitral appeal initiated by the same Petitioners who now ask this Court to vacate the award from which they appealed.

2. Alternatively, the Petition should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure because the award at issue is not final, and the Federal Arbitration Act — the Act under which Petitioners are proceeding — only permits the vacatur of a final award. As such, Petitioners have not plausibly alleged facts supporting a claim under this statute.

WHEREFORE, RB Commercial respectfully requests that the Court grant its Motion and dismiss the Petition without prejudice.

Submitted November 28, 2022

Respectfully submitted,

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/s/ Zach McCamey

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CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2022, a copy of the foregoing was filed electronically with the Clerk of the Court for the Western District of North Carolina by using the CM/ECF system. Counsel for all parties in this case are registered CM/ECF users and will be served by the CM/ECF system.

/s/ Zack McCamey
Zach McCamey